

Did claimant suffer accidental injury arising out of and in the course of her employment on the date alleged?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Appeals Board (Board) finds the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law and it is not necessary to repeat those herein. The Board adopts those as its own findings and conclusions.

Claimant alleges accidental injury to her knee and her back on March 2, 2001, while lifting reels, which claimant described as weighing 50 to 60 pounds. Claimant testified she reported the injury to her supervisor, Rhonda Kaye Treece (the B shift lead person). Ms. Treece acknowledges that claimant mentioned that she was having knee problems and she instructed claimant to go to the office and obtain an Ace bandage. However, Ms. Treece denies ever being advised by claimant that she suffered injuries to any other part of her body.

Claimant also worked with a packer by the name of Aaron Vincen, who testified both at the preliminary hearing and in a later deposition in this matter. Mr. Vincen acknowledged that he had been told by Ms. Treece that claimant had some type of knee problem and that claimant had been instructed to get an Ace bandage from the office. However, Mr. Vincen, who worked within just a few feet of claimant, testified that claimant never told him about any knee problems and never advised him that she had any difficulties with any other parts of her body.

Claimant completed her shift on March 2, 2001, returning the next day for a full shift, without apparent complaints to anyone. Additionally, claimant requested no medical care at that time.

Claimant first appeared at the Coffeyville Regional Medical Center emergency room on March 7, alleging low back pain, neck pain, bilateral hip pain, right shoulder pain and pain in her left leg, all attributable to the alleged incident of March 2, 2001.

This matter was originally brought before the Administrative Law Judge at a preliminary hearing held June 6, 2001. In his June 11, 2001 Order, Judge Frobish denied claimant benefits, finding at that time that claimant had failed to sustain her burden of proving accidental injury arising out of and in the course of her employment. That issue was appealed to the Board, and, in its Order of August 27, 2001, the denial was affirmed. The Board found the contradictory medical records and testimony, including the records from the Coffeyville Regional Medical Center, to be persuasive.

The Board considers not only the medical records of March 7, 2001, but also the emergency room records from August 20, 2000, which indicated claimant also complained

of low back pain, bilateral leg pain and sacrum pain at that time. The medical records indicate that injury occurred as a result of claimant's moving furniture. Additionally, the emergency room records of September 25, 2000, indicate that claimant had back pain after lifting at work while employed for a temporary employment agency.

Claimant was referred for evaluation to both Pedro A. Murati, M.D., and Philip R. Mills, M.D. Dr. Murati, who examined claimant on April 4, 2002, at the request of claimant's attorney, was provided a history of low back and bilateral knee pain occurring on the night of the alleged accident. Claimant then advised Dr. Murati she continued working for three to four days afterwards, with the increasing pain requiring that she go to the Coffeyville Regional Medical Center emergency room. This history is contradicted by claimant's testimony, where she stated that she only worked one more day after the incident and then the entire plant went on a two-week down time. This would indicate that claimant worked on March 3 and did not work again until arriving at the emergency room on March 7. The history provided to Dr. Murati is also significant in that claimant denied any preexisting lower extremity problems.

Claimant's examination by Dr. Mills on September 9, 2002 was done at the request of respondent's attorney. The history provided Dr. Mills is also inconsistent in that claimant denied any difficulties before the date of accident, with the exception of a minor back strain five years prior to the date of accident. The complaints claimant provided Dr. Mills included low back pain, thigh pain, buttock pain, difficulty breathing and numbness and tingling into both legs.

The Board sometimes defers to an Administrative Law Judge's opportunity to view witnesses during live testimony. Claimant, Ms. Treece and Mr. Vincen all testified before the Administrative Law Judge at the preliminary hearing, and claimant again testified before the Administrative Law Judge at the regular hearing. Claimant's entitlement to benefits in this case hinges to a substantial degree upon the credibility of claimant's testimony. It is apparent from the Award of the Administrative Law Judge that claimant's credibility was questioned. The Board finds after reviewing the testimony of the various parties and the medical records in evidence, that claimant has failed to prove that she suffered accidental injury arising out of and in the course of her employment. The Board, therefore, affirms the Award of the Administrative Law Judge denying claimant compensation in this matter.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Jon L. Frobish dated December 29, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Kevin T. Stamper, Attorney for Claimant
Stephen J. Jones, Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director